

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

IN THE MATTER OF:

UNILATERAL ADMINISTRATIVE  
ORDER FOR REMOVAL ACTIONS

FMC Idaho LLC

Pocatello, Idaho

U.S. EPA Region 10  
CERLCA Docket No.  
CERCLA-10-2007-0051

Respondent .

Proceeding Under Section  
106 (a) of the Comprehensive  
Environmental Response,  
Compensation, and Liability  
Act, as amended, 42 U.S.C.  
§ 9606 (a).

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1                                    **I. JURISDICTION AND GENERAL PROVISIONS**

2            1. This Administrative Order ("Order") is issued under the  
3 authority vested in the President of the United States by  
4 Section 106(a) of the Comprehensive Environmental Response,  
5 Compensation, and Liability Act of 1980, as amended ("CERCLA"),  
6 42 U.S.C. § 9606(a). This authority was delegated to the  
7 Administrator of the United States Environmental Protection  
8 Agency ("EPA") by Executive Order No. 12580, 52 Fed. Reg. 2923  
9 (Jan. 23, 1987), and further delegated to the Regional  
10 Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. This  
11 authority was further redelegated by the Regional Administrator  
12 of EPA Region 10 to the Director, Office of Environmental  
13 Cleanup by EPA Region 10 Delegation Nos. R10 14-14-A and R10  
14 14-14-B.

15            2. This Order pertains to property located on Highway 30  
16 west of the City of Pocatello, Idaho, in Township 6 South, Range  
17 33 East, and largely within the boundaries of the Fort Hall  
18 Indian Reservation, the "FMC Site" or the "Site." This Order  
19 requires Respondent to conduct removal actions described herein  
20 to abate an imminent and substantial endangerment to the public  
21 health or welfare or the environment that may be presented by  
22 the actual or threatened release of hazardous substances at or  
23 from the Site.

24            3. EPA has notified the Shoshone-Bannock Tribes and the  
25 State of Idaho Department of Environmental Quality of this  
26 action pursuant to Section 106(a) of CERCLA, 42 U.S.C. §  
27 9606(a).  
28

29                                    **II. PARTIES BOUND**

30            4. This Order applies to and is binding upon Respondent  
31 and Respondent's successors and assigns. Any change in  
32 ownership or control of the Site or change in the corporate or

1 partnership status of Respondent, including, but not limited to,  
2 any transfer of assets or real or personal property, shall not  
3 alter Respondent's responsibilities under this Order.

4 5. Respondent shall ensure that their contractors,  
5 subcontractors, and representatives receive a copy of this Order  
6 and comply with this Order. Respondent shall be responsible for  
7 any noncompliance with this Order.

### 8 9 **III. DEFINITIONS**

10 6. Unless otherwise expressly provided herein, terms used  
11 in this Order which are defined in CERCLA or in regulations  
12 promulgated under CERCLA shall have the meaning assigned to them  
13 in CERCLA or in such regulations. Whenever terms listed below  
14 are used in this Order or in the attached appendices and  
15 incorporated hereunder, the following definitions shall apply:

16 a. "Action Memorandum" shall mean the EPA Action  
17 Memorandum relating to the Site signed on December 13, 2006, by  
18 the Director, Office of Environmental Cleanup, EPA Region 10,  
19 and all attachments thereto. The Action Memorandum is attached  
20 as Appendix B.

21 b. "CERCLA" shall mean the Comprehensive  
22 Environmental Response, Compensation, and Liability Act of 1980,  
23 as amended, 42 U.S.C. § 9601, et seq.

24 c. "Day" shall mean a calendar day. In computing any  
25 period of time under this Order, where the last day would fall  
26 on a Saturday, Sunday, or Federal holiday, the period shall run  
27 until the close of business of the next working day.

28 d. "Effective Date" shall be the effective date of  
29 this Order as provided in Section XXVIII.

30 e. "EPA" shall mean the United States Environmental  
31 Protection Agency and any successor departments or agencies of  
32 the United States.

1 f. "Interest" shall mean interest at the rate  
2 specified for interest on investments of the EPA Hazardous  
3 Substance Superfund established by 26 U.S.C. § 9507, compounded  
4 annually on October 1 of each year, in accordance with 42 U.S.C.  
5 § 9607(a). The applicable rate of interest shall be the rate in  
6 effect at the time the interest accrues. The rate of interest  
7 is subject to change on October 1 of each year.

8 g. "National Contingency Plan" or "NCP" shall mean  
9 the National Oil and Hazardous Substances Pollution Contingency  
10 Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. §  
11 9605, codified at 40 C.F.R. Part 300, and any amendments  
12 thereto.

13 h. "Order" shall mean this Unilateral Administrative  
14 Order, all appendices attached hereto including the Statement of  
15 Work and Action Memo, and all documents incorporated by  
16 reference into this document including without limitation EPA-  
17 approved submissions. EPA-approved submissions (other than  
18 progress reports) are incorporated into and become a part of the  
19 Order upon approval by EPA. In the event of conflict between  
20 this Order and any appendix or other incorporated documents,  
21 this Order shall control.

22 i. "Paragraph" shall mean a portion of this Order  
23 identified by an Arabic numeral.

24 j. "Parties" shall mean EPA and Respondent.

25 k. "Response Costs" shall mean all costs, including,  
26 but not limited to, direct and indirect costs, that the United  
27 States incurs in reviewing or developing plans, reports and  
28 other items pursuant to this Order, verifying the Work, or  
29 otherwise developing, implementing, overseeing, or enforcing  
30 this Order, including but not limited to, payroll costs,  
31 contractor costs, travel costs, laboratory costs, the costs  
32 incurred pursuant to Paragraph 49 (cost of attorney time and any

monies paid to secure access, including the amount of just compensation), and Paragraph 58 (emergency response).

1. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

m. "Respondent" shall mean FMC Idaho LLC.

o. "Section" shall mean a portion of this Order identified by a Roman numeral.

p. "Site" shall mean the FMC Idaho LLC Site, located on Highway 30 west of the City of Pocatello, Idaho, in Township 6 South, Range 33 East, and largely within the boundaries of the Fort Hall Indian Reservation in Power County.

q. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the removal action, as set forth in Appendix A to this Order, and any modifications made thereto in accordance with this Order.

r. "Waste Material" shall mean: (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (iii) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

s. "Work" shall mean all activities Respondent is required to perform under this Order.

#### IV. FINDINGS OF FACT

7. The FMC Site is located in Southeastern Idaho on Highway 30, approximately 2.5 miles northwest of Pocatello, Idaho. The Site was used to manufacture elemental phosphorus from phosphate ore from the late 1940s until December 2001. Various lined and unlined surface impoundments, including Pond 16S, were used to manage wastewater containing phosphorus. FMC



1 has conducted activities to decommission and dismantle the  
2 manufacturing plant.

3 8. Most of the FMC Site is within the boundary of the Fort  
4 Hall Reservation. Fort Hall Reservation land in the vicinity of  
5 the FMC Site is both agricultural and residential. The Bureau of  
6 Land Management (BLM) lands in the vicinity of the Site are  
7 designated as multiple uses. Unincorporated land in Bannock and  
8 Power Counties in the vicinity of the Site is mostly  
9 agricultural with scattered residences. Pocatello and Chubbuck  
10 land in the vicinity of the FMC Site is primarily zoned for  
11 residential use.

12 9. From 1947 to April 2000, FMC Corporation owned the FMC  
13 Site. In April 2000, FMC sold the FMC Site to Astaris Idaho  
14 LLC, a subsidiary of Astaris LLC. Astaris LLC was owned 50% by  
15 FMC Corporation and 50% by Solutia Inc. In February 2002, FMC  
16 acquired 100% of Astaris Idaho LLC and changed its name to FMC  
17 Idaho LLC. FMC Idaho LLC, a wholly owned subsidiary of FMC  
18 Corporation, has owned and operated the FMC Site since February  
19 2002.

20 10. The FMC Site is part of the Eastern Michaud Flats  
21 (EMF) Superfund site that was listed on the CERCLA National  
22 Priority List (NPL) on August 30, 1990 (Federal Register, Volume  
23 55, Number 169, page 35502). Within the EMF Superfund site  
24 boundaries are the FMC Site and the J.R. Simplot Company "Don"  
25 Plant.

26 11. EPA issued a CERCLA Record of Decision (ROD) selecting  
27 a remedy for the EMF site in 1998. EPA is reevaluating the  
28 Record of Decision as it pertains to the FMC Site. FMC is  
29 conducting a Supplemental Remedial Investigation and Feasibility  
30 Study pursuant to a CERCLA Administrative Order on Consent,  
31 which will include an investigation of former FMC plant  
32

1 operating areas that were in operation and not evaluated at the  
2 time of EPA's original site investigation.

3 12. The FMC Site contains hazardous waste management units  
4 regulated under RCRA, including Pond 16S. On October 16, 1998,  
5 the United States filed a Complaint against FMC in U.S. District  
6 Court for the District of Idaho alleging a number of RCRA  
7 violations at the FMC elemental phosphorus manufacturing  
8 facility, including the allegation that FMC placed reactive and  
9 ignitable phossy wastes in Pond 16S since it became operational  
10 in 1993. A Consent Decree entered on July 13, 1999, required FMC  
11 Corporation, among other things, to close and cap Pond 16S waste  
12 in accordance with all applicable RCRA requirements and an EPA  
13 approved closure plan. Pond 16S is located entirely within the  
14 exterior boundaries of the Fort Hall Reservation.

15 13. Pond 16S covers an area of approximately 10.2 acres  
16 and contains approximately 140 square feet of phosphorus  
17 containing water and solids from the elemental phosphorus  
18 manufacturing process. Pond 16S received waste until September  
19 1999, including waste to which lime had been added. Pond 16S  
20 received phosphorus containing water and precipitator slurry  
21 from the furnace building, phosphorus decontamination residues,  
22 and water from other ponds. Pond 16S solids consist of fine-  
23 grained furnace solids (ore, coke and silica), elemental  
24 phosphorus from the precipitators, and residual sludge and dirt  
25 contained in phossy water after processing at the phosphorus  
26 loading dock.

27 14. EPA approved the final closure plan for Pond 16S on  
28 February 6, 2004. The Consent Decree and the approved closure  
29 plan required removal of water, construction of a center dike to  
30 allow placement of fill material, and placement of a cap over  
31 the waste. It also required temperature and pressure monitoring  
32 and gas collection systems to be installed. FMC reported that it



1 had completed closure in 2004, and certified that it had  
2 completed closure in accordance with the approved closure plan  
3 in January 2005.

4 15. On March 13, 2001, FMC discovered that phosphine had  
5 apparently built up, auto-ignited, and melted small holes in the  
6 temporary cover that FMC installed over the fill material on  
7 Pond 16S in advance of installing the final cap. The holes were  
8 located immediately next to the fill material in the anchor  
9 trench for the temporary cover at the west side of the Pond.  
10 Subsequent gas monitoring detected phosphine at the perimeter of  
11 the temporary cover in concentrations greater than 20 parts per  
12 million (ppm). FMC attributed the presence of phosphine to the  
13 sludge-intrusive activities of the center dike construction,  
14 which caused mixing of limed and non limed materials. FMC  
15 indicated that because the initial fill and temporary cover were  
16 constructed immediately following placement of the center dike,  
17 the increased volume of phosphine gas was trapped within the  
18 initial fill and beneath the temporary cover. An interim gas  
19 extraction and treatment system was installed and put into  
20 service by May 11, 2001.

21 16. The Pond 16S cap consists of a seven foot thick  
22 evapotranspiration layer composed of soil, crushed and screened  
23 slag and sand which overlays a geo-synthetic composite barrier  
24 and drainage system which overlays the waste. A dual purpose  
25 pressure monitoring and gas collection system was installed  
26 under the cap around the perimeter of the Pond. Eight  
27 temperature monitoring sensors were also installed in well  
28 casings extending down through the cap to locations above the  
29 waste to monitor temperature. The Post Closure Plan for Pond  
30 16S requires that the pressure monitoring system be converted to  
31 a gas collection and treatment system if pressure exceeds 27  
32

1 inches of mercury for a one week period and detectable  
2 concentrations of phosphine or hydrogen gas have been measured.

3 17. In January 2006, a high temperature alarm (temperature  
4 exceeding 22°C) was observed in temperature monitoring sensor  
5 number 8. FMC determined that the alarm was a false alarm  
6 related to failure of the transmitter, and reported that there  
7 have been no exceedances of the temperature or pressure limits  
8 in the post closure plan since post closure monitoring began in  
9 2005. In February 2006, elevated levels of phosphine gas was  
10 detected in the metal enclosure housing the top of the well  
11 casing for a temperature sensor, and FMC began operating two gas  
12 extraction systems meeting the design specified in Appendix O of  
13 the Pond 16S closure plan. Subsequently, in June 2006,  
14 intermittent emissions of smoke from two temperature monitoring  
15 point (TMP) vents (T03 and T04) were observed. FMC has reported  
16 that its assessment is that phosphine gas was continuing to  
17 collect in TMP well casings and likely accumulating to the  
18 phosphine auto-ignition concentration (20,000 parts per million)  
19 inside the temperature well casings or vents forming phosphorus  
20 pentoxide.

21 18. Visible air emissions from Pond 16S have been observed  
22 on a number of occasions since June 2006, including by Shoshone-  
23 Bannock Tribal staff on September 6, 2006 and September 18,  
24 2006.

25 19. On November 20 and 21, 2006, the EPA conducted removal  
26 site evaluation activities at the Site. Air samples were  
27 collected of ambient air at Pond 16S, upwind of Pond 16S and  
28 downwind of Pond 16S. Additionally, air samples were collected  
29 from the top of temperature monitoring well casing no. 1 as well  
30 as from the discharge end of FMC's existing gas extraction and  
31 treatment system. Samples were analyzed for phosphine, hydrogen  
32 cyanide, and hydrogen sulfide. Analytical data show elevated

1 concentrations of phosphine gas (360 ppm), hydrogen cyanide gas  
2 (0.12 ppm), and hydrogen sulfide gas (507 ppm) being generated  
3 within the cap at Pond 16S. Ambient air samples showed  
4 concentrations as high as 0.13 ppm for hydrogen sulfide downwind  
5 of the pond. Phosphine and hydrogen cyanide were not detected in  
6 ambient air at levels at or above the detection limit.  
7 Concentrations of phosphine, hydrogen cyanide and hydrogen  
8 sulfide gas accumulating within the Pond 16S cap and being  
9 released may present an imminent and substantial endangerment to  
10 human health and the environment.

11 20. Phosphine gas is extremely flammable and produces a  
12 dense white cloud of phosphorus pentoxide when it burns.  
13 Phosphorus pentoxide is a severe respiratory tract irritant due  
14 to the rapid formation of orthophosphoric acid,  $H_3PO_4$ , on contact  
15 with water. Phosphine gas is also explosive and may ignite  
16 spontaneously on contact with air. The National Institute of  
17 Occupational Safety and Health has determined that phosphine gas  
18 is immediately dangerous to life and health at 50 ppm (based on  
19 a 30 minute exposure). The Occupational Safety and Health  
20 Administration (OSHA) time weighted average Permissible Exposure  
21 Limit is 0.3 ppm.

22  
23 21. Hydrogen sulfide is a flammable gas. Exposure to low  
24 concentrations of hydrogen sulfide may cause irritation to the  
25 eyes, nose, or throat. It may also cause difficulty in breathing  
26 for some asthmatics. Brief exposures to high concentrations of  
27 hydrogen sulfide can cause a loss of consciousness, permanent or  
28 long-term effects such as headaches, poor attention span, poor  
29 memory, and poor motor function, and possibly death. The  
30 Occupational Safety and Health Administration Permissible  
31 Exposure Limit for General Industry is 20 ppm (ceiling), however  
32 if no other measurable exposure occurs during the 8-hour work

1 shift, exposures may exceed 20 ppm, but not more than 50 ppm  
2 (peak), for a single time period up to 10 minutes. The National  
3 Institute of Occupational Safety and Health has determined that  
4 hydrogen sulfide gas is immediately dangerous to life and health  
5 at 100 ppm.

6 22. Hydrogen cyanide gas has been detected at Pond 16S,  
7 including at an hourly maximum concentration of 1.11 ppm prior  
8 to placement of the interim cover and final cap.

9 23. Hydrogen cyanide can cause rapid death due to  
10 metabolic asphyxiation within seconds or minutes of the  
11 inhalation of high concentrations of hydrogen cyanide gas.  
12 Cyanide directly stimulates the chemoreceptor of the carotid and  
13 aortic bodies, causing hyperpnoea. Cardiac irregularities are  
14 often noted. Exposure to hydrogen cyanide can occur through  
15 inhalation, ingestion, eye or skin contact, and absorption  
16 through the skin, eyes, and mucous membranes. Explosive hazards  
17 can occur on exposure to air, sources of ignition, including  
18 heat, or open flame; and when stored for long periods of time.  
19 The Occupational Safety and Health Administration time weighted  
20 average permissible exposure limit is 10 ppm. The National  
21 Institute of Occupational Safety and Health has determined that  
22 hydrogen cyanide is immediately dangerous to life and health at  
23 50 ppm.

24 24. Potential receptors of the phosphine, hydrogen cyanide  
25 and phosphorus pent oxide released from Pond 16S include  
26 Respondent's employees, contractors and subcontractors, as well  
27 as visitors. Concentrations of phosphine, hydrogen cyanide and  
28 hydrogen sulfide gas accumulating within the Pond 16S cap and  
29 being released may present an imminent and substantial  
30 endangerment to site workers and others at the site.

31 25. EPA issued a time critical removal Action Memorandum  
32 on December 13, 2006 for Pond 16S to remove and treat phosphine

1 and other gases present at levels of concern in a manner that  
2 satisfies specified performance objectives.

3 26. Action is necessary to protect receptors from  
4 inhalation of phosphine, hydrogen cyanide, hydrogen sulfide and  
5 phosphorus pent oxide at Pond 16S, and to minimize the risk of  
6 fire and explosion from build-up of phosphine, hydrogen sulfide  
7 and hydrogen cyanide gas under the cap at Pond 16S.

#### 8 9 **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

10 27. Based on the Findings of Fact set forth above, and the  
11 Administrative Record supporting the removal action, EPA has  
12 determined that:

13 a. The FMC LLC Site and Pond 16S are each a "facility"  
14 as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

15 b. The contamination found at the Site and at Pond  
16 16S, as identified in the Findings of Fact above, includes  
17 "hazardous substances" as defined by Section 101(14) of CERCLA,  
18 42 U.S.C. § 9601(14).

19 c. The Respondent is a "person" as defined by Section  
20 101(21) of CERCLA, 42 U.S.C. § 9601(21).

21 d. The Respondent is a liable party under one or more  
22 provisions of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).  
23 Respondent is the "owner" and/or "operator" of the facilities,  
24 as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20),  
25 and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C.  
26 § 9607(a)(1).

27 e. The conditions described in the Findings of Fact  
28 above constitute an actual and/or threatened "release" of a  
29 hazardous substance from the facility as defined by Section  
30 101(22) of CERCLA, 42 U.S.C. § 9601(22).

31 f. The conditions at the Site constitute a threat to  
32 public health or welfare or the environment, based on the



1 factors set forth in Section 300.415(b)(2) of the National Oil  
2 and Hazardous Substances Pollution Contingency Plan, as amended,  
3 40 CFR Part 300 ("NCP").

4 g. The conditions present at the Site constitute an  
5 imminent and substantial endangerment to public health or  
6 welfare or the environment within the meaning of Section 106(a)  
7 of CERCLA, 42 U.S.C. § 9606(a).

8 h. The removal actions required by this Order are  
9 necessary to protect the public health, welfare, or the  
10 environment and are not inconsistent with the NCP and CERCLA.

## 11 12 VI. ORDER

13 28. Based upon the foregoing Findings of Fact,  
14 Conclusions of Law, Determinations, and the Administrative  
15 Record for this Site, it is hereby Ordered that Respondent  
16 comply with all provisions of this Order and any modifications  
17 hereto, including, but not limited to, all appendices to this  
18 Order and all documents incorporated by reference into this  
19 Order.

## 20 21 VII. NOTICE OF INTENT TO COMPLY

22 29. Respondent shall notify EPA in writing within 3 days  
23 after the Effective Date of this Order of Respondent's  
24 irrevocable intent to comply with this Order. Failure of  
25 Respondent to provide such notification within this time period  
26 shall be a violation of this Order by Respondent. Such written  
27 notice shall be sent to:

28 Andrew Boyd

29 Office of Regional Counsel

30 United States Environmental Protection Agency,

31 Region 10

32 1200 Sixth Avenue (M/S ORC-158)



1 Seattle, Washington 98101

2 Telephone: (206) 553-1222

3  
4 **VIII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR,**  
5 **AND ON-SCENE COORDINATOR**

6 30. Respondent shall perform the Work or shall retain one  
7 or more contractors to perform the Work and shall notify EPA of  
8 the name(s) and qualifications of Respondent or the  
9 contractor(s) within 10 days of the Effective Date. If, after  
10 the commencement of Work, Respondent retains additional  
11 contractor(s) or subcontractor(s), Respondent shall notify EPA  
12 of the name(s) and qualification(s) of such contractor(s) or  
13 subcontractor(s) retained to perform the Work at least 10 days  
14 prior to commencement of such Work, unless otherwise agreed to  
15 by EPA. EPA retains the right, at any time, to disapprove of  
16 any or all of the contractors and/or subcontractors retained by  
17 Respondent or of Respondent's decision to perform the Work  
18 itself. If EPA disapproves of a selected contractor or  
19 subcontractor or of Respondent's decision to perform the Work,  
20 Respondent shall retain a different contractor or subcontractor  
21 and shall notify EPA of that contractor's or subcontractor's  
22 name and qualifications within 14 days of EPA's disapproval,  
23 unless otherwise agreed to by EPA.

24 31. Within 7 days after the Effective Date, Respondent  
25 shall designate a Project Coordinator who shall be responsible  
26 for administration of the Work required by this Order and shall  
27 submit in writing to EPA the designated Project Coordinator's  
28 name, address, telephone number, electronic mail address, and  
29 qualifications. To the greatest extent possible, the Project  
30 Coordinator shall be present on Site or readily available during  
31 the Work. EPA retains the right to disapprove of the designated  
32 Project Coordinator. If EPA disapproves of the designated

1 Project Coordinator, Respondent shall retain a different Project  
2 Coordinator and shall notify EPA of that person's name, address,  
3 telephone number, and qualifications within 7 days following  
4 EPA's disapproval, unless otherwise agreed to by EPA.  
5 Communications between Respondent and EPA, and all documents  
6 concerning the activities performed pursuant to this Order,  
7 shall be directed to the Project Coordinator. Receipt by  
8 Respondent's Project Coordinator of any notice or communication  
9 from EPA relating to this Order shall constitute receipt by  
10 Respondent.

11 32. EPA has designated Greg Weigel of the Emergency  
12 Response Unit, Office of Environmental Cleanup, Region 10, as  
13 its On Scene Coordinator ("OSC"). Except as otherwise provided  
14 in this Order, Respondent shall direct all submissions required  
15 by this Order to the OSC at U.S. EPA, 1435 North Orchard Street,  
16 Boise Idaho 83706 or to his or her designee. The OSC may be  
17 reached by phone at (208) 378-5773, or by e-mail at  
18 weigel.greg@epa.gov. Respondent shall ensure that all  
19 submittals are received by the On-Scene Coordinator by the  
20 applicable date.

21 33. EPA and Respondent shall have the right, subject to  
22 Paragraph 31, to change their respective designated OSC or  
23 Project Coordinator. Respondent shall notify EPA 7 days before  
24 changing their Project Coordinator. The initial notification  
25 may be made orally, but shall be followed by a written notice  
26 within 2 days.

#### 27 28 **IX. WORK TO BE PERFORMED**

29 34. Respondent shall perform, at a minimum, all actions  
30 necessary to implement the Statement of Work ("SOW") which is  
31 attached as Appendix A.  
32

1        35. The actions to be implemented include, but are not  
2 limited to, the implementation of the Action Memorandum for Pond  
3 16S, dated December 13, 2006, as set forth in the SOW.

4        36. The primary objective of this removal action is to  
5 take interim action to characterize the gases under Pond 16S and  
6 remove and treat phosphine and other gases present at levels of  
7 concern in a manner that satisfies specified performance  
8 objectives.

9        37. As required by the SOW, Respondent shall submit to EPA  
10 for review and approval a design documents and work plans for  
11 performing the removal actions in accordance with the SOW. The  
12 design documents and work plans shall provide a description of,  
13 and an expeditious schedule for, the Work required by this  
14 Order. All plans, including design documents, the Work Plan,  
15 reports and other deliverables will be reviewed and approved by  
16 EPA pursuant to Section X (EPA Approval of Plans and Other  
17 Submissions).

18        a. Except as otherwise approved by EPA, Respondent  
19 shall not commence any Work on-site until EPA has approved the  
20 Work Plan pursuant to Section X (EPA Approval of Plans and Other  
21 Submissions). Respondent shall notify EPA at least 48 hours  
22 prior to performing any Work on-Site pursuant to this Order,  
23 unless otherwise agreed to by EPA. Any non-compliance with any  
24 EPA-approved plans, reports, specifications, schedules, or other  
25 deliverables shall be considered a violation of the requirements  
26 of this Order. Determinations of non-compliance shall be made  
27 by EPA. Approval of design documents, the Work Plan and other  
28 submittals shall not limit EPA's authority under the terms of  
29 this Order to require Respondent to conduct activities  
30 consistent with this Order to accomplish the Work outlined in  
31 this Section.  
32

1           b. To the extent that information concerning the  
2 details of a particular item does not yet exist so that it can  
3 be described in the design documents or plans, the document  
4 shall set forth an expeditious schedule and plan for submission  
5 of supplement(s) to EPA for approval, which supplement(s) shall  
6 fully detail such items. All references to the review, approval  
7 and enforcement of the design documents and plans shall also be  
8 applicable to any supplement(s).

9           38. Respondent shall submit 5 copies of all plans, reports  
10 or other submissions required by this Order, the Statement of  
11 Work, or any approved work plan. Upon request by EPA,  
12 Respondent shall submit such documents in electronic form.

13           39. Respondent shall, at least 30 days prior to the  
14 conveyance of any interest in real property at or adjacent to  
15 Pond 16S give written notice to the transferee that the property  
16 is subject to this Order and written notice to EPA of the  
17 proposed conveyance, including the name and address of the  
18 transferee. Respondent also shall require that their successors  
19 comply with the immediately proceeding sentence and Sections XI  
20 (Site Access) and XII (Access to Information).

21  
22           40. Off-Site Shipments.

23           a. Respondent shall, prior to any off-Site shipment of  
24 Pond 16S Waste Material from the Site, provide written  
25 notification of such shipment of Waste Material to the  
26 appropriate state environmental official in the receiving  
27 facility's state and to the On-Scene Coordinator. However, this  
28 notification requirement shall not apply to any off-Site  
29 shipments when the total volume of all such shipments will not  
30 exceed 10 cubic yards.

31           i. Respondent shall include in the written  
32 notification the following information: (1) the name and

1 location of the facility to which the Waste Material is to be  
2 shipped; (2) the type and quantity of the Waste Material to be  
3 shipped; (3) the expected schedule for the shipment of the Waste  
4 Material; and (4) the method of transportation. Respondent  
5 shall notify the OSC and the state in which the planned  
6 receiving facility is located of major changes in the shipment  
7 plan, such as a decision to ship the Waste Material to another  
8 facility within the same state, or to a facility in another  
9 state.

10           ii. The identity of the receiving facility and  
11 state will be determined by Respondent following the award of  
12 the contract for the removal action. Respondent shall provide  
13 the information required by Paragraph 40a and 40b as soon as  
14 practicable after the award of the contract and before the Waste  
15 Material is actually shipped.

16           b. Before shipping any hazardous substances,  
17 pollutants, or contaminants from Pond 16S to an off-Site  
18 location, Respondent shall obtain EPA's certification that the  
19 proposed receiving facility is operating in compliance with the  
20 requirements of CERCLA Section 121(d)(3), 42 U.S.C. §  
21 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send  
22 hazardous substances, pollutants, or contaminants from Pond 16S  
23 to an off-Site facility that complies with the requirements of  
24 the statutory provision and regulation cited in the preceding  
25 sentence.

26  
27           **X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

28           41. After review of any plan, report or other item that is  
29 required to be submitted for approval pursuant to this Order, in  
30 a notice to Respondent EPA shall: (a) approve, in whole or in  
31 part, the submission; (b) approve the submission upon specified  
32 conditions; (c) modify the submission to cure the deficiencies;



1 (d) disapprove, in whole or in part, the submission, directing  
2 that Respondent modify the submission; or (e) any combination of  
3 the above. However, EPA shall not modify a submission without  
4 first providing Respondent at least one notice of deficiency and  
5 an opportunity to cure within 10 days of receipt of EPA's  
6 notification of the required revisions, except where to do so  
7 would cause serious disruption to the Work or where previous  
8 submission(s) have been disapproved due to material defects.

9 42. In the event of approval, approval upon conditions, or  
10 modification by EPA, pursuant to Subparagraph 41(a), (b), (c),  
11 or (e), Respondent shall proceed to take any action required by  
12 the plan, report or other deliverable, as approved or modified  
13 in writing by EPA, and in accordance with the schedule approved  
14 by EPA. Following EPA approval or modification of a submission  
15 or portion thereof, Respondent shall not thereafter alter or  
16 amend such submission or portion thereof unless directed by EPA.  
17 In the event that EPA modifies the submission to cure the  
18 deficiencies pursuant to Subparagraph 41(c) and the submission  
19 had a material defect, such defect may be considered a violation  
20 of this order and may subject Respondent to civil penalties in  
21 accordance with Section XVIII (Enforcement).

22 43. Resubmission.

23 a. Upon receipt of a notice of disapproval, Respondent  
24 shall, within 10 days or such longer time as specified by EPA in  
25 such notice, correct the deficiencies and resubmit the plan,  
26 report, or other deliverable for approval. Respondent may be  
27 subject to penalties in accordance with Section XVIII  
28 (Enforcement) if the resubmission is disapproved or modified due  
29 to a material defect as provided in Paragraphs 44 and 45.

30 b. Notwithstanding the receipt of a notice of  
31 disapproval, Respondent shall proceed to take any action  
32 required by any non-deficient portion of the submission, unless



1 otherwise directed by EPA. Implementation of any non-deficient  
2 portion of a submission shall not relieve Respondent of any  
3 liability for penalties under Section XVIII (Enforcement) for  
4 violations of this Order.

5 c. EPA reserves the right to stop Respondent from  
6 proceeding further, either temporarily or permanently, on any  
7 task, activity or deliverable at any point during the Work.

8 44. If EPA disapproves a resubmitted plan, report or other  
9 deliverable, or portion thereof, EPA may again direct Respondent  
10 to correct the deficiencies. EPA shall also retain the right to  
11 modify or develop the plan, report or other deliverable.  
12 Respondent shall implement any such plan, report, or deliverable  
13 as corrected, modified or developed by EPA.

14 45. If upon resubmission, a plan, report, or other  
15 deliverable is disapproved or modified by EPA due to a material  
16 defect, Respondent shall be deemed in violation of this Order  
17 for failure to submit such plan, report, or other deliverable  
18 timely and adequately. Respondent may be subject to penalties  
19 for such violation as provided in Section XVIII.

20 46. Any plans, including the Work Plan, the schedule,  
21 reports, and other deliverables submitted to EPA under this  
22 Order shall, upon approval or approval with modifications by  
23 EPA, be incorporated into and become fully enforceable under  
24 this Order. In the event EPA approves or modifies a portion of  
25 a plan, report, or other deliverable submitted to EPA under this  
26 Order, the approved or modified portion shall be incorporated  
27 into and enforceable under this Order.

28 47. Neither failure of EPA to expressly approve or  
29 disapprove of Respondent's submissions within a specified time  
30 period, nor the absence of comments, shall be construed as  
31 approval by EPA. Whether or not EPA gives express approval for  
32

1 Respondent's deliverables, Respondent is responsible for  
2 preparing deliverables acceptable to EPA.

#### 4 XI. SITE ACCESS

5 48. Respondent shall, commencing on the Effective Date,  
6 provide EPA and its representatives, including contractors, with  
7 access at all reasonable times to Pond 16S and the FMC Site, or  
8 such other property, for the purpose of conducting any activity  
9 related to this Order. These individuals shall be permitted to  
10 move freely at the Site and appropriate off-Site areas in order  
11 to conduct actions which EPA determines to be necessary.

12 49. Where any action under this Order is to be performed  
13 in areas owned by or in possession of someone other than  
14 Respondent, Respondent shall use their best efforts to obtain  
15 all necessary access agreements within 30 days after the  
16 Effective Date, or as otherwise specified in writing by the OSC.  
17 Any such access agreement shall provide reasonable access for  
18 Respondent and their representatives, including contractors, for  
19 the purpose of conducting any activity related to this Order,  
20 and for EPA and its representatives to move freely at the site  
21 in order to conduct actions that EPA determines to be necessary.  
22 Respondent shall immediately notify EPA if after using their  
23 best efforts they are unable to obtain such agreements. For  
24 purposes of this Paragraph, "best efforts" includes the payment  
25 of reasonable sums of money in consideration of access.  
26 Respondent shall describe in writing their efforts to obtain  
27 access. EPA may then assist Respondent in gaining access, to  
28 the extent necessary to effectuate the removal actions described  
29 herein, using such means as EPA deems appropriate. EPA reserves  
30 the right to seek payment from Respondent for all costs,  
31 including cost of attorneys' time, incurred by the United States  
32 in obtaining such access.

1        50. Notwithstanding any provision of this Order, EPA  
2 retains all of its access authorities and rights, as well as all  
3 of its rights to require land/water use restrictions, including  
4 enforcement authorities related thereto, under CERCLA, RCRA, and  
5 any other applicable statutes or regulations.  
6

7                    **XII. ACCESS TO INFORMATION**

8        51. Respondent shall provide to EPA, upon request, copies  
9 of all documents and information within their possession or  
10 control or that of their contractors or agents relating to  
11 activities at Pond 16S or to the implementation of this Order,  
12 including, but not limited to, sampling, analysis, chain of  
13 custody records, manifests, trucking logs, receipts, reports,  
14 sample traffic routing, correspondence, or other documents or  
15 information related to the Work.

16        52. Respondent may assert business confidentiality claims  
17 covering part or all of the documents or information submitted  
18 to EPA under this Order to the extent permitted by and in  
19 accordance with Section 104(e)(7) of CERCLA, 42 U.S.C.  
20 § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or  
21 information determined to be confidential by EPA will be  
22 afforded the protection specified in 40 C.F.R. Part 2, Subpart  
23 B. If no claim of confidentiality accompanies documents or  
24 information when they are submitted to EPA, or if EPA has  
25 notified Respondent that the documents or information are not  
26 confidential under the standards of Section 104(e)(7) of CERCLA  
27 or 40 C.F.R. Part 2, Subpart B, the public may be given access  
28 to such documents or information without further notice to  
29 Respondent. Respondent shall segregate and clearly identify all  
30 documents or information submitted under this Order for which  
31 Respondent asserts business confidentiality claims.  
32

1        53. Respondent may assert that certain documents, records  
2 or other information are privileged under the attorney-client  
3 privilege or any other privilege recognized by federal law. If  
4 the Respondent asserts such a privilege in lieu of providing  
5 documents, it shall provide EPA with the following: (a) the  
6 title of the document, record, or information; (b) the date of  
7 the document, record, or information; (c) the name and title of  
8 the author of the document, record, or information; (d) the name  
9 and title of each addressee and recipient; (e) a description of  
10 the contents of the document, record, or information; and (f)  
11 the privilege asserted by Respondent. However, no documents,  
12 reports or other information created or generated pursuant to  
13 the requirements of this Order shall be withheld on the grounds  
14 that they are privileged.

15        54. No claim of confidentiality shall be made with respect  
16 to any data, including, but not limited to, all sampling,  
17 analytical, monitoring, hydrogeologic, scientific, chemical, or  
18 engineering data, or any other documents or information  
19 evidencing conditions at or around Pond 16S.

### 20 21                    **XIII. RECORD RETENTION**

22        55. Until 10 years after Respondent's receipt of EPA's  
23 notification pursuant to Section XXIV (Notice of Completion of  
24 Work), Respondent shall preserve and retain all non-identical  
25 copies of records and documents (including records or documents  
26 in electronic form) now in its possession or control or which  
27 come into its possession or control that relate in any manner to  
28 the performance of the Work or relating to the hazardous  
29 substances found on or released from Pond 16S, regardless of any  
30 corporate retention policy to the contrary. Until 10 years  
31 after Respondent's receipt of EPA's notification pursuant to  
32 Section XXIV (Notice of Completion of Work), Respondent shall

1 also instruct their contractors and agents to preserve all non-  
2 identical copies of records and documents (including records or  
3 documents in electronic form) and any additional information of  
4 whatever kind, nature or description relating to performance of  
5 the Work.

6 56. At the conclusion of this document retention period,  
7 Respondent shall notify EPA at least 90 days prior to the  
8 destruction of any such records or documents, and, upon request  
9 by EPA, Respondent shall deliver any such records or documents  
10 to EPA. Respondent may assert that certain documents, records  
11 or other information are privileged under the attorney-client  
12 privilege or any other privilege recognized by federal law. If  
13 Respondent asserts such a privilege, they shall provide EPA with  
14 the following: (a) the title of the document, record, or  
15 information; (b) the date of the document, record, or  
16 information; (c) the name and title of the author of the  
17 document, record, or information; (d) the name and title of each  
18 addressee and recipient; (e) a description of the subject of the  
19 document, record, or information; and (f) the privilege asserted  
20 by Respondent. However, no documents, reports or other  
21 information created or generated pursuant to the requirements of  
22 this Order shall be withheld on the grounds that they are  
23 privileged.

#### 24 25 **XIV. COMPLIANCE WITH OTHER LAWS**

26 57. Respondent shall perform all actions required pursuant  
27 to this Order in accordance with all applicable local, state,  
28 tribal and federal laws and regulations except as provided in  
29 Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R.  
30 § 300.400(e) and 300.415(j). In accordance with 40 C.F.R. §  
31 300.415(j), all on-Site actions required pursuant to this Order  
32 shall, to the extent practicable, as determined by EPA,



1 considering the exigencies of the situation, attain applicable  
2 or relevant and appropriate requirements ("ARARs") under federal  
3 environmental, or state environmental or facility siting laws.  
4 Respondent shall identify ARARs in the design documents and work  
5 plans subject to EPA approval.

7 **XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

8 58. In the event of any release of a hazardous substance  
9 from Pond 16S or any action or occurrence during performance of  
10 the Work which causes or threatens a release of Waste Material  
11 from the Site that constitutes an emergency situation or may  
12 present an immediate threat to public health or welfare or the  
13 environment, Respondent shall, subject to Paragraph 59,  
14 immediately take all appropriate action. Respondent shall take  
15 these actions in accordance with all applicable provisions of  
16 this Order, including, but not limited to, the Health and Safety  
17 Plan, in order to prevent, abate or minimize any such release or  
18 threat of release, or endangerment caused or threatened.  
19 Respondent shall also immediately notify the OSC or, in the  
20 event of his/her unavailability, the Regional Duty Officer,  
21 Environmental Cleanup Office, Emergency Response Unit, EPA  
22 Region 10, 206-553-1263, of the incident or Site conditions. In  
23 the event that Respondent fails to take appropriate response  
24 action as required by this Paragraph, and EPA takes such action  
25 instead, Respondent shall pay EPA for all costs of the response  
26 action not inconsistent with the NCP pursuant to Section XVII  
27 (Payment of Response Costs).

28 59. Nothing in the preceding Paragraph or this Order shall  
29 be deemed to limit any authority of EPA to: a) to take all  
30 appropriate action to protect human health and the environment  
31 or to prevent, abate, respond to, or minimize an actual or  
32 threatened release of Waste Material on, at, or from the Site;



1 or b) to direct or order such action, or seek a court order to  
2 protect human health and the environment or to prevent, abate,  
3 respond to, or minimize an actual or threatened release of Waste  
4 Material on, at, or from the Site.

5 60. In addition, in the event of any release of a  
6 hazardous substance from Pond 16S that exceeds a CERCLA  
7 Reportable Quantity, or that exceeds a level otherwise specified  
8 in the Order, Respondent shall immediately notify the OSC.  
9 Respondent shall submit a written report to EPA within 7 days  
10 after each release, setting forth the events that occurred and  
11 the measures taken or to be taken to mitigate any release or  
12 threat of release or endangerment caused or threatened and to  
13 prevent the reoccurrence of such a release or threat of release.  
14 This reporting requirement is in addition to, and not in lieu  
15 of, reporting under Section 103(c) of CERCLA, 42 U.S.C. §  
16 9603(c), and Section 304 of the Emergency Planning and Community  
17 Right-To-Know Act of 1986, 42 U.S.C. § 11004, et seq.

#### 18 19 **XVI. AUTHORITY OF ON-SCENE COORDINATOR**

20 61. The OSC shall be responsible for overseeing  
21 Respondent's implementation of this Order. The OSC shall have  
22 the authority vested in an OSC by the NCP, including the  
23 authority to halt, conduct, or direct any Work required by this  
24 Order, or to direct any other removal actions undertaken at the  
25 Site. Absence of the OSC from the Site shall not be cause for  
26 stoppage of the Work unless specifically directed by the OSC.

#### 27 28 **XVII. PAYMENT OF RESPONSE COSTS**

29 62. Upon EPA's written demand, Respondent shall pay EPA  
30 for all Response Costs incurred or to be incurred in connection  
31 with this Order as defined in Paragraph 6 above. On a periodic  
32 basis, EPA will send Respondent an accounting of all Response

1 Costs incurred by the United States with respect to this Order  
2 that consists of an EPA SCORPIOS or other regionally prepared  
3 cost summary, which includes direct and indirect costs incurred  
4 by EPA and its contractors. Respondent shall make all payments  
5 within 30 days of receipt of each written demand requiring  
6 payment, except as otherwise provided in Paragraphs 66a and 67b  
7 of this Order.

8 63. Respondent shall make all payments required by this  
9 Section by a certified or cashier's check or checks or  
10 electronic funds transfer made payable to "EPA Hazardous  
11 Substance Superfund," referencing the name and address of the  
12 Respondent and EPA Site/Spill ID number 10EY. Respondent shall  
13 send the check(s) to:

14 Mellon Bank  
15 EPA-Region 10 Superfund  
16 P.O. Box 371099M  
17 Pittsburgh, PA 15251

18 64. At the time of payment, Respondent shall send a copy  
19 of the check and notice that payment has been made to Servicing  
20 Finance Office, EPA Financial Management Center, MS-NWD,  
21 Cincinnati, OH 45268.

22 65. In the event that the payments for Response Costs are  
23 not made within 30 days of Respondent's receipt of a written  
24 demand requiring payment, Respondent shall pay Interest on the  
25 unpaid balance. The Interest on Response Costs shall begin to  
26 accrue on the date of receipt of the written demand and shall  
27 continue to accrue until the date of payment. Payments of  
28 Interest made under this Paragraph shall be in addition to such  
29 other remedies or sanctions available to the United States by  
30 virtue of Respondent's failure to make timely payments under  
31 this Section. Respondent shall make all payments required by  
32

1 this Paragraph in the manner described in Paragraphs 62, 63, and  
2 64.

3       66. Respondent may dispute all or part of a written demand  
4 for payment of Response Costs submitted under this Order, if  
5 Respondent alleges that EPA has made an accounting error, or if  
6 Respondent believes EPA incurred excess costs as a direct result  
7 of an EPA action that was inconsistent with the NCP. Such  
8 objection shall be made in writing within 30 days of receipt of  
9 the written demand and must be sent to the OSC. Any such  
10 objection shall specifically identify the contested Response  
11 Costs and the basis for objection. EPA and Respondent shall  
12 have 30 days from EPA's receipt of Respondent's written  
13 objection to resolve the dispute (the "Negotiation Period").  
14 The Negotiation Period may be extended at the sole discretion of  
15 EPA. Such extension may be granted verbally, but must be  
16 confirmed in writing. Any agreement reached by the Parties  
17 pursuant to this Paragraph shall be in writing and shall, upon  
18 signature by the Parties, be incorporated into and become an  
19 enforceable part of this Order. If the Parties are unable to  
20 resolve the dispute within the Negotiation Period, an EPA  
21 management official at the Office Director level or higher will  
22 issue a written decision. EPA's decision shall be incorporated  
23 into and become an enforceable part of this Order. Respondent's  
24 obligations under this Order shall not be tolled by submission  
25 of any objection for dispute resolution under this Paragraph.  
26 The dispute resolution procedures set forth in Paragraphs 66 and  
27 67 shall be the exclusive mechanisms for resolving disputes  
28 regarding Respondent's obligation to pay EPA for its Response  
29 Costs.

30       67. In the event of an objection, Respondent shall within  
31 the 30 day period pay all uncontested Response Costs to EPA in  
32 the manner described in Paragraphs 62, 63, and 64. If any

1 dispute over costs is resolved before payment is due, the amount  
2 due will be adjusted, as necessary. If the dispute is not  
3 resolved before payment is due, Respondent shall pay the full  
4 amount of the uncontested costs to EPA as specified in  
5 Paragraphs 62, 63, and 64, on or before the due date.  
6 Respondent shall establish an interest-bearing escrow account in  
7 a federally-insured bank duly chartered in the State of Idaho,  
8 or other state as approved by EPA, and remit to that escrow  
9 account funds equivalent to the amount of the contested Response  
10 Costs. Respondent shall send to the EPA OSC a copy of the  
11 transmittal letter and check paying the uncontested Response  
12 Costs, and a copy of the correspondence that establishes and  
13 funds the escrow account, including, but not limited to,  
14 information containing the identity of the bank and bank account  
15 under which the escrow account is established as well as a bank  
16 statement showing the initial balance of the escrow account. If  
17 EPA prevails in the dispute, within 5 days of the resolution of  
18 the dispute, Respondent shall pay the sums due (with accrued  
19 interest) to EPA in the manner described in Paragraphs 62, 63,  
20 and 64. If Respondent prevails concerning any aspect of the  
21 contested costs, Respondent shall pay that portion of the costs  
22 (plus associated accrued interest) for which they did not  
23 prevail to EPA in the manner described in Paragraphs 62, 63, and  
24 64. Respondent shall be disbursed any balance of the escrow  
25 account.

#### 26 27 **XVIII. ENFORCEMENT**

28 68. Violation, failure or refusal to comply with any  
29 provision of this Order may subject Respondent to civil  
30 penalties of up to \$32,500 per violation per day, as provided in  
31 Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the  
32 Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg.

1 7121, 40 C.F.R. Part 19.4. EPA may carry out the required  
2 actions unilaterally, pursuant to Section 104 of CERCLA, 42  
3 U.S.C. § 9604, and/or may seek judicial enforcement of this  
4 Order pursuant to Section 106 of CERCLA, 42 U.S.C § 9606.  
5 Respondent may also be subject to punitive damages in an amount  
6 up to three times the amount of any cost incurred by the United  
7 States as a result of such violation, failure or refusal to  
8 comply, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. §  
9 9607(c)(3).

#### 10 11 **XIX. RESERVATIONS OF RIGHTS BY EPA**

12 69. Nothing herein shall limit the power and authority of  
13 EPA or the United States to take, direct, or order all actions  
14 necessary to protect public health, welfare, or the environment  
15 or to prevent, abate, or minimize an actual or threatened  
16 release of hazardous substances, pollutants or contaminants, or  
17 hazardous or solid waste on, at, or from the Site, pursuant to  
18 CERCLA or any other applicable law. Further, nothing herein  
19 shall prevent EPA from seeking legal or equitable relief to  
20 enforce the terms of this Order, from taking other legal or  
21 equitable action as it deems appropriate and necessary, or from  
22 requiring Respondent in the future to perform additional  
23 activities pursuant to CERCLA or any other applicable law. EPA  
24 reserves the right to bring an action against Respondent under  
25 Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any  
26 Response Costs incurred by the United States related to this  
27 Order or the Site and not paid by Respondent.

#### 28 29 **XX. OTHER CLAIMS**

30 70. By issuance of this Order, the United States and EPA  
31 assume no liability for injuries or damages to persons or  
32 property resulting from any acts or omissions of Respondent.



1 The United States or EPA shall not be deemed a party to any  
2 contract entered into by Respondent or its directors, officers,  
3 employees, agents, successors, representatives, assigns,  
4 contractors, or consultants in carrying out actions pursuant to  
5 this Order.

6 71. Nothing in this Order constitutes a satisfaction of or  
7 release from any claim or cause of action against Respondent or  
8 any person not a party to this Order, for any liability such  
9 person may have under CERCLA, other statutes, or common law,  
10 including but not limited to any claims of the United States for  
11 costs, damages and interest under Sections 106 and 107 of  
12 CERCLA, 42 U.S.C. § 9606 and 9607.

13 72. Nothing in this Order constitutes a decision on  
14 preauthorization of funds under Section 111(a)(2) of CERCLA, 42  
15 U.S.C. § 9611(a)(2).

16 73. No action or decision by EPA pursuant to this Order  
17 shall give rise to any right to judicial review, except as set  
18 forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

## 19 20 **XXI. INSURANCE**

21 74. At least 7 days prior to commencing any Work on-Site  
22 under this Order, unless otherwise agreed to by EPA, Respondent  
23 shall secure, and shall maintain for the duration of this Order,  
24 comprehensive general liability insurance and automobile  
25 insurance with limits of 5 million dollars, combined single  
26 limit. Within the same time period, Respondent shall provide  
27 EPA with certificates of such insurance and a copy of each  
28 insurance policy. In addition, for the duration of the Order,  
29 Respondent shall satisfy, or shall ensure that their contractors  
30 or subcontractors satisfy, all applicable laws and regulations  
31 regarding the provision of worker's compensation insurance for  
32 all persons performing the Work on behalf of Respondent in



1 furtherance of this Order. If Respondent demonstrates by  
2 evidence satisfactory to EPA that any contractor or  
3 subcontractor maintains insurance equivalent to that described  
4 above, or insurance covering some or all of the same risks but  
5 in an equal or lesser amount, then Respondent need provide only  
6 that portion of the insurance described above which is not  
7 maintained by such contractor or subcontractor.

## 8 9 **XXII. MODIFICATIONS**

10 75. The OSC may make modifications to any plan or schedule  
11 or Statement of Work in writing or by oral direction. Any oral  
12 modification will be memorialized in writing by EPA within 5  
13 days, but shall have as its effective date the date of the OSC's  
14 oral direction. Any other requirements of this Order may be  
15 modified in writing by signature of the Director, Office of  
16 Environmental Cleanup, EPA Region 10.

17 76. If Respondent seeks permission to deviate from any  
18 approved Work Plan or schedule or the Statement of Work,  
19 Respondent's Project Coordinator shall submit a written request  
20 to EPA for approval outlining the proposed modification and its  
21 basis. Respondent may not proceed with the requested deviation  
22 until receiving approval from the OSC pursuant to Paragraph 75.

23 77. No informal advice, guidance, suggestion, or comment  
24 by the OSC or other EPA representatives regarding reports,  
25 plans, specifications, schedules, or any other writing submitted  
26 by Respondent shall relieve Respondent of its obligation to  
27 obtain any formal approval required by this Order, or to comply  
28 with all requirements of this Order, unless it is formally  
29 modified.

1                                   **XXIII. ADDITIONAL REMOVAL ACTIONS**

2           78. Unless otherwise stated by EPA, within 30 days of  
3 receipt of notice from EPA that additional removal actions are  
4 necessary to protect public health, welfare, or the environment,  
5 Respondent shall submit for approval by EPA a Work Plan for the  
6 additional removal actions. The Work Plan shall conform to the  
7 applicable requirements of Section IX (Work to Be Performed) of  
8 this Order. Upon EPA's approval of the Work Plan pursuant to  
9 Section X, Respondent shall implement the Work Plan for  
10 additional removal actions in accordance with the provisions and  
11 schedule contained therein. This Section does not alter or  
12 diminish the OSC's authority to make oral modifications to any  
13 plan or schedule pursuant to Section XXII (Modifications).  
14

15                                   **XXIV. NOTICE OF COMPLETION OF WORK**

16           79. When EPA determines, after EPA's review of the Final  
17 Report, that all Work has been fully performed in accordance  
18 with this Order, with the exception of any continuing  
19 obligations required by this Order, including Payment of  
20 Response Costs (Section XVII) , and Record Retention, (Section  
21 XIII), EPA will provide written notice to Respondent. If EPA  
22 determines that any such Work has not been completed in  
23 accordance with this Order, EPA will notify Respondent, provide  
24 a list of the deficiencies, and require that Respondent modify  
25 the Work Plan, if appropriate, in order to correct such  
26 deficiencies within 10 days of receipt of the EPA notice, or as  
27 otherwise specified by EPA. The modified Work Plan shall  
28 include a schedule for correcting such deficiencies. Within 30  
29 days of receipt of written approval of the modified Work Plan,  
30 or as otherwise specified by EPA, Respondent shall implement the  
31 modified and approved Work Plan and shall submit a modified  
32 Final Report in accordance with the EPA notice. Failure by

Respondent to implement the approved modified Work Plan shall be a violation of this Order.

#### **XXV. ADMINISTRATIVE RECORD**

80. Within 60 days after initiation of on-site removal activity, an Administrative Record which contains the documents that form the basis for the issuance of this Order will be made available for review by appointment on weekdays between the hours of 8:30 and 4:00 at the Superfund Records Center at EPA offices in Region 10, 1200 Sixth Avenue, Seattle, Washington. To review the Administrative Record, please contact the Superfund Records Center at (206) 553-4494 to make an appointment.

#### **XXVI. OPPORTUNITY TO CONFER**

81. Within 5 days after issuance of this Order, Respondent may in writing request a conference with EPA, on any matter pertinent to this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions which Respondent may have regarding this Order. Any such conference shall be held within 10 days of Respondent's request unless extended by written agreement of the Parties.

82. Respondent may appear in person or by an attorney or other representative at the conference. Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or at least 5 days prior to the effective date if Respondent does not request a conference. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to

1 seek review of this Order. Any request for a conference or  
2 written comments or statements should be submitted to:

3 Andrew Boyd  
4 Office of Regional Counsel  
5 United States Environmental Protection Agency  
6 1200 Sixth Avenue (M/S ORC-158)  
7 Seattle, Washington 98101  
8 Telephone: 206-553-1222  
9

10 **XXVII. SEVERABILITY**

11 83. If a court issues an order that invalidates any  
12 provision of this Order or finds that Respondent has sufficient  
13 cause not to comply with one or more provisions of this Order,  
14 Respondent shall remain bound to comply with all provisions of  
15 this Order not invalidated or determined to be subject to a  
16 sufficient cause defense by the court's order.  
17


18 **XXVIII. EFFECTIVE DATE**

19 84. This Order shall be effective 15 days after the Order  
20 is signed by the Director, Office of Environmental Cleanup,  
21 Region 10 unless a conference is requested as provided herein.  
22 If a conference is requested, this Order shall be effective on  
23 the 10<sup>th</sup> day following the day of the conference unless modified  
24 in writing by EPA.  
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32 It is so ORDERED.

1  
2 BY:

3   
Daniel D. Opalski

4  Director, Office of Environmental Cleanup

5 Region 10

6 U.S. Environmental Protection Agency  
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8 DATE: December 14, 2006  
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